Supreme Court, U.S.
FILED
SEP 4 1979
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-10

THE UNIVERSITY OF TENNESSEE, *et al.*,

Petitioners,

v.

RITA SANDERS GEIER, *et al.*,

Respondents.

No. 79-55

THE TENNESSEE COMMISSION OF HIGHER EDUCATION,

Petitioner,

v.

RITA SANDERS GEIER, *et al.*,

Respondents.

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY OF ORIGINAL PLAINTIFFS, RITA SANDERS GEIER, PATRICK J. GILPIN, ERNEST TERRELL, HAROLD SWEATT, and PHILLIP SWEATT TO BRIEF *AMICUS CURIAE*

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The original Plaintiffs, Rita Sanders Geier, et al., objects to the motion of the University of Tennessee at

Nashville Chapter of the American Association of University Professors [hereinafter cited as UT-N AAUP] for leave to file a brief *amicus curiae,* which was served on August 15, 1979, on the following grounds:

A. This Court's judgment on the proposed merger will not affect UT-N AAUP's interest.

UT-N AAUP has absolutely no role in the desegregation of University of Tennessee at Nashville [hereinafter cited as UT-N] and therefore any judgment by this Court will not affect UT-N AAUP. *See* Petitioner's Motion for Leave to File Brief *Amicus Curiae* on Behalf of University of Tennessee at 2, *University of Tennessee v. Geier,* No. 79-10 (U.S., filed July 3, 1979) [hereinafter cited as *Geier*]. The merger was devised to remedy *de jure* segregation practiced by the State of Tennessee, not educational methods used by professors in its employ. As such, the Court must require the State of Tennessee—not UT-N teachers—to implement the merger.

B. The adjustment of UT-N AAUP members to employment in an integrated university affects neither their contractual nor their constitutional rights.

The merger of UT-N and TSU will not curtail "the affected faculty members' personal contractual and constitutional rights." Petitioner's Motion for Leave to File Brief *Amicus Curiae* on Behalf of University of Tennessee at 2-3, *Geier.* Although proposed *amicus* contends that, absent Supreme Court standards defining a unitary system of higher education, "affected faculty [will] never [be] certain of their role in Black colleges" (Petitioner's Brief *Amicus Curiae* at 5, *Geier*), "a role in Black colleges" does not violate any contractual right, nor due process or equal protections rights.

C. UT-N AAUP's request for amicus curiae status is estopped by laches due to its failure to participate in any proceeding of the lower courts.

Petitioner did not participate in the proceedings of any of the three United States District Court trials (*Sanders v. Ellington,* 288 F.Supp. 937 (M.D. Tenn. 1972); *Geier v. Dunn,* 337 F.Supp. 573 (M.D. Tenn. 1972); *Geier v. Blanton,* 427 F.Supp. 644 (M.D. Tenn. 1977)) nor the proceedings of the United States Court of Appeals for the Sixth Circuit, *Geier v. University of Tennessee,* 597 F.2d 1056 (6th Cir. 1979). Thus, although proposed *amicus* contends that it has a role in the desegregation process of Tennessee's public higher education system, *supra,* the complete diffidence of proposed *amicus* for twelve years of litigation mandates the estoppel by laches of any claims by proposed *amicus* of an interest in this proceeding.

D. The lack of specificity in any of UT-N AAUP's claims is fatal to its request for permission to file a brief *amicus curiae*.

Arguments by proposed *amicus* that this case weighs heavily on issues of, e.g., academic freedom, measurements of desegregation, and "just" colleges are too vague for human comprehension. *Amicus* couches its arguments in terms that not only lack legal significance but legal meaning. Further confusion is engendered by Petitioner UT-N AAUP's retained counsel's representation. From a letter of Mr. Laska:

> "My earlier request [to file an *amicus* brief] was made on behalf of the UT-N faculty, but certain objections have been raised, namely that I did not actually represent the faculty. Be that as it may, this request is made on behalf of the UT-N Chapter of the American Association of University Professors."

E. All facts and questions relative to the issues involved in this action have been adequately presented to the Court by the parties.

CONCLUSION

For the foregoing reasons we respectfully submit that the motion of UT-N AAUP for leave to file a brief *amicus curiae* should be denied.

Respectfully submitted,

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